

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

LC 2002-000747

06/17/2003

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT  
P. M. Espinoza  
Deputy

FILED: \_\_\_\_\_

STATE OF ARIZONA

GARY L SHUPE

v.

LEO H ALAMIN

MICHAEL J DEW

PHX MUNICIPAL CT  
REMAND DESK-LCA-CCC

MINUTE ENTRY

PHOENIX CITY COURT

Cit. No. #8975145; 8975146

Charge: DUI-LIQUOR/DRUGS/VAPOR/COMBO, A CLASS 1 MISDEMEANOR  
DUI/DRUGS/METABOLITE, A CLASS 1 MISDEMEANOR

DOB: 02/16/77

DOC: 10/19/01

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This case has been under advisement and the Court has considered and reviewed the record of the proceedings from the Phoenix City Court, and the Memoranda submitted by counsel.

The only issue raised by the Appellant is that the trial judge failed to inform Appellant of those constitutional rights that he gave up by submitting the case to the court for determination

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without a jury based upon stipulated evidence. The record reflects that the only right that the trial judge informed Appellant that he waived by submitting the case was his right to a trial by jury.<sup>1</sup> Both parties are in agreement with existing Arizona law that a submission to the court on stipulated evidence is tantamount to a guilty plea. Both parties also agree that the trial judge failed to advise Appellant of the additional rights that he gave up by entering into the submission as required by State v. Avila<sup>2</sup>. The record also does not indicate that the trial judge informed Appellant of the nature of the prior conviction allegation and the affects of his admission to the prior conviction.<sup>3</sup>

This Court must find, as a matter of law that the trial judge erred in concluding that Appellant's waiver of his constitutional rights and submission to the court was knowingly, intelligently, and voluntarily made.

IT IS THEREFORE ORDERED reversing the judgment of guilt and sentence imposed in this case.

IT IS FURTHER ORDERED remanding this matter back to the Phoenix City Court for a new trial.

/S/ HONORABLE MICHAEL D. JONES

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JUDICIAL OFFICER OF THE SUPERIOR COURT

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<sup>1</sup> R.T. of November 15, 2002 at page 2.

<sup>2</sup> 127 Ariz. 21, 617 P.2d 1137 (1980).

<sup>3</sup> Appellee points out in its memorandum at page 1.